

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 494 of 1992****For Approval and Signature:****HONOURABLE MR.JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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BHUPENDRAKUMAR SANATKUMAR - Appellant(s)**Versus****THE STATE OF GUJARAT - Opponent(s)**

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Appearance :

MR KB ANANDJIWALA for Appellant.

Mr.L.R.Poojari, A.P.P. for the respondent-State.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH**Date : 07/09/2007****ORAL JUDGMENT**

1. This appeal is directed against the judgment and order dated 22-5-1992 passed by the learned Special Judge, Jamnagar in Special Case no.5/1985 whereby the appellant-

Bhupendrakumar Sanatkumar Pathak was convicted and sentenced to suffer R.I. For one year and fine of Rs.500/-, in default, S.I. for two months in respect of offence punishable under Section 5(1)(D) of the Prevention of Corruption Act, 1947 (for short "the Act").

2. Briefly stated, the case of the prosecution is that the incident in question took place on 16-7-1984. On 15-7-1984 there was a quarrel between Mariamben sister of Daudbhai Kasambhai Tariya residing at Ganesh Vas, Jamnagar with her landlord in connection with which a complaint came to be filed at Jamnagar City A-Division Police Station against Mariamben, her son and her daughter. Accordingly, the police informed Mariamben and other accused to remain present in the police station on the next day i.e on 16-7-1984. On 16-7-1984, the complainant who is the brother of Mariamben residing at Kojanaka, Jamnagar, accompanied by Mariamben and her son and daughter went to Jamnagar City A-Division Police Station. The complainant went with them with a view to be a surety for bail. The present appellant-Constable Bhupendrakumar Sanatkumar Pathak produced Mariamben, her son and daughter before the Court of the Chief Judicial Magistrate, Court no.3, Jamnagar, and all these accused were released on bail. It is alleged that present appellant told the complainant that as he had remained with them all through out the day, Rs.25/- be paid to him, however,

the complainant stated that they were poor persons and was not in a position to give any amount. Thereupon, the present appellant insisted that the amount be paid to him at Khambhaliya Police Chowky after 6.00 p.m. and the complainant agreed to make the payment. But as in fact the complainant was not willing to pay any amount as bribe, he approached the ACB Office, Jamnagar and lodged complaint before P.I. Raval of ACB, Jamnagar which came to be recorded at 4.30 p.m. Thereupon, Prafulchandra Ranchodbhai Parmar and Dixitbhai J. Mehta were called at ACB Office, Jamnagar. The complaint was read over to the Panchas and the Panchas had put their signatures thereon. The complainant then produced three currency notes aggregating Rs.25/- i.e. two currency notes in the denomination of Rs.10/- each and one currency note in the denomination of Rs.5/-. These currency notes were then smeared with anthracene powder. When these currency notes were viewed under ordinary light nothing significant appeared, but when observed under ultra violet lamp light blue fluorescent colour appeared. These currency notes were then put into the left pocket of the bush-shirt of the complainant.. The complainant was instructed not to touch these currency notes till the demand is made by the appellant and that when the demand is made these currency notes be given to the appellant. Panch no.1 was instructed to be in company of the complainant and

to observe and hear the conversation that takes place between the appellant and the complainant during the course of passing over of the currency notes. The complainant was also instructed to give signal by placing his hands on his head as soon as the amount is received by the appellant. Thereafter, the preliminary Panchnama was drawn.. Thereupon, the complainant along with the Panchas, P.I. Raval and other members of the raiding party went to Khambaliya Gate Police Chowky. At that time, the present appellant was standing 15ft. away from Khambhaliya Police Chowky. The complainant and Panch no.1 went to the appellant and complainant asked the appellant as to his whereabouts and in turn the appellant asked the complainant as to whether he had brought the money and if so to handover the money to him. The complainant replied in the affirmative and also offered the amount , however, the appellant suggested that they may go to the Hotel at Havai Chowky. The appellant, complainant and Panch no.1 went to the said hotel and ordered for tea, however, while drinking water the appellant demanded money from the complainant. Thereupon, the complainant took out the tainted currency notes from the left pocket of his bush-shirt and gave the same to the appellant and the appellant accepted the same. When the appellant was trying to put the currency notes into his pant pocket the complainant gave the signal by placing his

hands on his head. Soon the papers of the raiding party reached the spot. Head Constable Ahmedsinh Jadega caught the left hands of the appellant and P.I. Raval gave his introduction to the appellant. However, on account of heavy rush and lots of people were gathered on the spot, the appellant was taken to Khambhaliya Police Station and from there he was brought to the ACB Office, Jamnagar where experiment of ultra violet lamp was carried out on the fingers, thumb and on the palm of the left hand of the appellant and visible marks of anthracene powder were noticed. The currency notes which were recovered by Panch no.1 from the fist of the appellant was also found to have visible marks of anthracene powder. The numbers of these currency notes tallied with the numbers mentioned in the preliminary Panchnama. On the upper part of the left pocket of the pant worn by the appellant marks of anthracene powder were noticed when viewed under ultraviolet lamp. Thereafter, Muddammal was recovered and detailed second part of the Panchnama was drawn. On completion of investigation charge-sheet was filed against the present appellant before the Special Court, Jamnagar. The learned Special Judge, Jamnagar framed charge Exh.2 against the present appellant-accused for the offence punishable under Section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act. The charge was read over and explained to

the present appellant-accused who pleaded not guilty to the charge and claimed to be tried.

3. To prove its case against the appellant-accused the prosecution has examined (i) PW1 Daudbhai Kasambhai Exh.5, (ii) PW 2 Prafulchandra Ranchodbhai Parmar Exh.7, (iii) Witness Liladhar Bhimji Sarvaiya Exh.9, (iv) Witness Head Constable Mavubha Deepsinh Jadega Exh.14, (v) Witness Police Constable Ranveersing Agarsinh Jethva Exh.18, (vi) Witness Mansukhlal Harilal Exh.19 and (vii) Police Inspector Girjashanker Keshavlal Raval Exh.20. The prosecution has also produced documentary evidence such as complaint at Exh.6, Panchnama at Exh.8, letter written by DSP, Jamnagar to the ACB Office at Exh.10, copy of the order of the first appointment of the appellant as Police Constable at Exh.11, appointment memo of appellant-accused at Exh.12, sanction to prosecute the appellant-accused at Exh.13, Yadi sent by the Jamnagar A-Division Police to the Juvenile Court in connection with the Crime Register no.164/1984 at Exh.16, Yadi to produce the accused person in connection with Crime Register no.164/84 before the Court at Exh.17 and P.I. ACB, Jamnagar's letter to DSP, Jamnagar for providing necessary papers at Exh.21. After recording of the evidence of prosecution was over, the learned Special Judge recorded the further statement of the appellant-accused under Section 313 of the Code of Criminal Procedure. The sum and substance of

his further statement was to the effect that he was falsely implicated in the case, however, a detailed reference to the further statement of the appellant-accused shall be made a little later.

4. On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution both oral as well as documentary, the learned Judge of the trial Court held that the prosecution has established beyond reasonable doubt that the appellant-accused did demand the bribe money of Rs.25/- from the complainant 16-7-1984, that the complainant did pay the same to the appellant-accused, that the appellant did accept the said bribe money from the complainant at Yadav Hotel, and therefore, held the appellant-accused guilty of offence with which he was charged and passed the judgment and order of conviction and sentence, giving rise to the present appeal.
5. I have heard the learned Counsel Mr. K.B. Anandjiwala for the appellant-accused as well as the learned A.P.P. Mr. Poojari for the respondent-State at length and in great details and have also perused the record with great care and caution.
6. Learned Counsel Mr. K.B. Anandjiwala for the appellant-accused submitted that the appellant accused was falsely involved in the case and this explanation tendered by the appellant-accused before the Court is quite probable as, according to him, on scrutinizing the entire evidence, it

creates serious doubt about the genuineness of the entire investigation and the prosecution case and the learned trial Court having not considered the same has committed error, and therefore, the appellant is entitled to the benefit of doubt or acquittal. He also argued that looking to the evidence of complainant and the Panch witness nos.1 and 2, prima facie, the complaint is ante time and the Panchnama is also drawn at ante time. According to the learned Counsel, the complaint and Panchnama had been subsequently prepared and the appellant-accused had been roped in a false case. It is also the submission of the learned Counsel that the manner in which the incident had taken place is quite unnatural and improbable. The learned Counsel also submitted that there are major discrepancies and contradictions on the material aspects of the time of lodging complaint, time of drawing Panchnama and place of demand of bribe money which creates serious doubt about the genuineness of the investigation, and therefore, the appellant accused deserves to be acquitted.

7. Learned A.P.P. Mr. Poojari submitted that appellant-accused is caught red-handed with currency notes smeared with anthracene powder and that the prosecution having successfully established the case of demand and acceptance through the evidence of reliable witnesses, the burden is on the appellant-accused to prove otherwise. According to the

learned A.P.P., the explanation tendered by the appellant-accused is not believable and the prosecution has proved its case beyond reasonable doubt against the appellant-accused. According to the learned A.P.P. the learned Judge of the trial Court has appreciated the evidence in its right perspective and arrived at a just and proper conclusion in convicting the appellant-accused, and therefore, the appeal deserves to be dismissed.

8. Now, in the instant case, it is worthwhile to refer to the further statement of the appellant-accused recorded under Section 313 of the Criminal Procedure Code. In his further statement, the appellant has stated that in connection with Crime Register no.164 of 1984 as per the order of Constable Mavuba Dixit, the appellant-accused himself produced the accused persons(who were admittedly the complainant's sister Mariamben as well as her son and daughter) before the Chief Judicial Magistrate Court, Jamnagar. It has been further stated by the appellant-accused that he restrained the relatives of the accused persons to see them by telling them that without the permission of the Court, he could not allow anybody to meet the accused persons. According to the appellant-accused he even refused to go for tea with them when suggested by the accused persons by telling them that he was a Constable on duty who was responsible if anything happens. The appellant-accused further stated that the

complainant was annoyed by this attitude of the appellant-accused and threatened him of dire consequences. According to the appellant-accused when the Court proceedings was over, the complainant and his relatives-accused went away and the present appellant went to Jamnagar City A-Division Police Station, handed over the Yadi to Constable Mavuba Deepsinh and thereafter left for his house. According to the present appellant as per his routine schedule in the evening when he was passing by from the bank of the pond towards Khammbhaliya Gate on foot the complainant as well as two or three relatives of the complainant met him and picked up quarrel with him. According to the present appellant, the complainant told him that when he was in uniform, he was exhibiting his power in the Court, but now he is in simple dress. So saying, the complainant and his relatives caught hold of both the hands of the present appellant and quarrelled with him. At that time, one Mr. Raval of ACB Office and one Mr. Hemantsinh Bhikusha came there, caught hold of the present appellant and enquired of him as to why they were quarrelling. Thereafter, both of them brought the present appellant to the ACB Office and was made to sit in a closed room. Thereafter, the complainant, his relatives-accused, Officer Mr. Raval and other staff members of ACB Office had some private talk with one another and the present appellant was permitted to go to his home at late night and accordingly

he went to his house. The appellant has further stated that he used to go for walking to Khambhaliya Gate from his house when he was not on duty as in past he served at Khambhaliya Gate Police Chowky as unarmed Police Constable and that this fact is well within the knowledge of the complainant, Mr. Raval, Officer of ACB Office as well as the staff members of ACB. According to the appellant-accused, the complainant had good relations with Officer Mr. Raval of ACB Office; that the complainant was doing all the work including household work of officers of ACB Office, and therefore, on the day of incident, the appellant-accused was falsely roped in the case as the complainant and Panchas 1 and 2 were the persons of Mr. Raval, Officer of ACB Office.

9. Keeping in mind the above explanation tendered by the appellant-accused in his further statement, this Court proposes to go into the evidence on record. No doubt, it is a settled legal position that normally the Court would not give much weightage so far as time factor is concerned, but in the instant case, in my opinion, time factor is very much relevant and important in arriving at a just decision. PW 1 complainant Daudbhai Exh.5 has deposed before the Court that he had been to A-Division Police Station at 11.00 a.m. with his relatives-accused where the appellant-accused was present. This witness has further stated that his relatives-accused were released on bail at 4.00 p.m. and that they were in the

Court premises from 11.00 a.m. To 4.00 p.m. on 16-7-1984. It is an admitted fact that the complainant left the Court premises at 4.00 p.m. on 16-7-1984, went to his house and stayed there for half an hour. This witness has also stated that he reached the ACB Office at 5.00 p.m., however, on a bare perusal of the complaint it is found that at the bottom time is shown to be 4.30 p.m. while the date is shown as 16-7-1984. This would go a long way to show that the complaint is ante time, and therefore, the very base of the prosecution case does not have any support which creates serious doubt as to its credibility. The matter does not end there. Prafulchandra Ranchodbhai Parmar, PW 2 Exh.7 in his deposition has stated that P.I. Mr.Raval from ACB Office had been to his office between 4.00 p.m. and 5.00p.m. and upon instructions received from his Officer Mr. Shah, from there, both Mr. Prafulchandra and Mr. Raval had gone to the office of District Panchayat by jeep car. P.I. Raval then went into the Office of the District Panchayat and after some time returned in the company of one person. This witness has further stated that, then all of them went in jeep car to the ACB Office. This witness has categorically stated in cross-examination that they all reached the office of ACB between 6.00 and 6.15 p.m. Screening the evidence of PW1 complainant and Panchwitness PW 2 it becomes crystal clear that P.I. Mr. Raval and Panchwitness had reached the office

of ACB not before 6.00 p.m. to 6.15 p.m. PW 1, the complainant in his evidence has stated that he had narrated the facts of the complaint to P.I. Mr. Raval for which some time can be said to have been consumed, and therefore, it can safely be concluded that by no stretch of imagination the complaint could have been recorded any time before 5.00 to 5.15 p.m. Considering all these aspects, the stand taken by the learned Counsel for the appellant that the complaint is ante time gets strengthened. Again, it is but natural that after recording the complaint, P.I. Raval himself went by jeep for securing Panchas, he first went to the RTO office, he alighted from his jeep car and met the RTO officer and asked him to provide someone for acting as Panch. The evidence also discloses that the distance from ACB office to RTO office is 1 to 1.5 Kms. and on the way between ACB office and RTO office there are many buildings of bank, schools, office and residence. So, it cannot be disputed that even to reach RTO Office from ACB office by vehicle some time has been spent. PW2 Prafulchandra in his testimony has stated that thereafter, he and Mr. Raval went to the District Panchayat Office. P.I. Raval in his testimony at Exh.20 has stated that he went to the District Panchayat Office on foot and he asked the driver of the jeep to come there. He then secured one Pancha from the office of the District Panchayat and went to the ACB office with both the Panchas. Thus, some time is certainly

spent for going to the RTO Office as well as the office of the District Panchayat for securing Panchas and then to return to the ACB Office. Under these circumstances, when P.I. Raval is stated to have left ACB Office after recording the complaint, it can be said without a shadow of doubt that P.I. Raval could not have come back to the ACB Office before 6.00 to 6.15 p.m. along with the Panchas which is a clear indication that PW 2 Prafulchandra was speaking the truth when he said that they reached the office of the ACB between 6.00p.m. and 6.15 p.m. and his evidence is worthy of credence.

10. Exh.8 is the preliminary Panchnama. On going through this Panchnama, at the bottom, the time of commencement of drawing the Panchnama is stated to be 17.15 hrs and the time of completion is stated to be 18.30 hrs. That being so, as discussed earlier, if the complaint was not recorded before 5.00 p.m. to 5.15 p.m. there is no possibility of drawing the preliminary Panchnama between 5.15 p.m. and 6.30 p.m. as is mentioned in the preliminary Panchnama, more particularly, when PW 2 Prafulchandra has also stated in his testimony that they reached the ACB office around 6.00 to 6.15 p.m. Even considering this aspect, the entire case of the prosecution has no legs to stand as the same is not free from clouds of suspicion.

11. The complainant in his evidence has admitted that since

his birth he is residing opposite the ACB office, and therefore, there is some substance in the contention of the learned Counsel for the appellant as also the statement made by the appellant in his further statement that the complainant is working for the ACB office and has cordial relations with the Officers and staff members of the ACB office. In my view, therefore, the case of the appellant-accused that he has been falsely roped in, merits acceptance. Apart from this, the prosecution case also suffers from serious infirmities inasmuch as it rests entirely on the evidence of interested witnesses who are Panchas selected by the Investigating Officer Mr. Raval . In this case PI Mr. Raval, Exh.20 as well as Panchas appear to be working as a group in this affair and their closeness to PW 1, the complainant, stands well substantiated. This coupled with the fact that the appellant-accused has even denied to take tea with the complainant and his relatives-accused is a circumstance which indicates that the appellant-accused has been falsely implicated.

12. There is another aspect which should not escape consideration. It has been argued that it is only after the release of the complainant's relatives-accused that the present appellant has demanded the amount of Rs.25/- and that too for tea etc. for the reason that the appellant-accused had to remain with them for the whole day. Therefore, at that point of time, there was no question of the appellant-accused

doing any favour to the complainant as the process of releasing on bail was over and no prudent man would be prepared to offer bribe of Rs.25/- to the appellant-accused and that too at a later point of time. It is equally not probable that the appellant-accused would demand any amount by way of bribe after the work is over. Therefore, there is some substance in the explanation tendered by the appellant-accused that the money was demanded for tea etc. The statement made by the complainant that he first offered Rs.5/- which the appellant-accused had thrown away is also of no significance since it was stated for the first time in cross-examination. Therefore, the corroboration essential in such a case as to the acceptance of the amount by way of bribe is missing in this case.

13. Coming now to the trap and investigation, even assuming that the trap was laid and carried out in the manner prescribed under law after completion of all required formalities, it is interesting to note that the trap day demand as per the evidence of complainant, Panchwitnesses and Investigating Officer , is stated to have been made at Yadav Hotel at Bavai Chowky and the currency notes tainted with anthracene powder were also accepted at the said hotel itself at 6.45 p.m. on 16-7-1984. Despite the fact that anthracene powder was available with the raiding party, as borne out from the evidence on record, no experiment of ultra violet

lamp was conducted there and then, but instead Hemantsinh Bhikubhai Shah is stated to have caught hold of the left hand of the appellant-accused who was attempting to throw away the tainted currency notes from his fist. According to the complainant, the appellant-accused was then taken in that very condition in which he was caught red-handed with the tainted currency notes in his fist to Khambhaliya Police Chowky by all the members of the raiding party including Panchas and from there to the ACB office where the experiment of ultra violet lamp was carried out and presence of anthracene powder was noticed in the currency notes recovered from the appellant-accused as also on the fingers, thumb, palm of left hand and on the upper part of the left pant pocket of the appellant-accused. The Investigating Officer had tried to explain away the lapse by stating that there was heavy rush in the hotel at that time. However, it is surprising to note that even at Khambhaliya Police Chowky the experiment of ultra violet lamp was not carried out which smells foul, and therefore, the investigation is also unfair in view of the fact that the manner in which the appellant-accused was made to move from place to place with the tainted currency notes in his fist without carrying out the said experiment, and carrying out the experiment after a considerably long time at ACB Office, is difficult to swallow.

14. In view of what is discussed hereinabove, I am of the

view that all the relevant aspects of the case have been completed overlooked by the learned Special Judge of the trial Court., and thereby committed grave error in passing the judgment and order of conviction and sentence against the present appellant-accused. I have not only perused the reasonings assigned by the trial Court but also cross-checked the reasoning with the evidence on record with a view to satisfying that the reasonings recorded by the trial Court are consistent with the material on record, however, as discussed above, I find that the reasonings assigned by the trial Court are inconsistent with the material on record. In that view of the matter, the appellant-accused deserves acquittal. I am fortified in my view by the judgment rendered in the case of Gulam Mahmood A. Malek v. The State of Gujarat reported in AIR 1980 SC 1558, wherein at paragraph 6, it has been observed that:

“In appreciating the evidence in this case the background should not be forgotten. The complaint was prepared by Natvarlal who was accused in at least four cases. He did not have the least compunction in saying that he used to give money to the accused on several occasions. His case that he gave a bribe on 7-7-72 was rejected. His complaint that bribe was demanded on 7-7-72 was lodged only on 17-7-72. Apart from the fact that the complainant

is in the nature of an accomplice, his story prima facie is suspect. Before any Court could act on his testimony, corroboration in material particulars is necessary. The prosecution relies only on the evidence of Kirti Kumar, the panch witness for corroboration. Kirti Kumar is a student and employed in the office of Tube Well Maintenance Department which is in the same building , as that of the Anti-Corruption Department. No doubt, there is no evidence that he is inimically disposed against the accused but he admitted that though his office usually starts at 10.30 A.M. He came to his office on that date at 8.45 A.M. and joined the party who conducted the raid. Though the panch witness corroborates the complainant, regarding the recovery, the delay in effecting the recovery of the money, the failure to examine independent witnesses who were admittedly in the court hall and in the next room to which the accused was taken, and the recovery made, makes the entire prosecution case unacceptable.” Reference may also be had to the decision rendered by the Honourable Supreme Court in the case of T.Subramaniam v. The State of Tamil Nadu reported in AIR 2006 SC 836 relevant paras 9 and 10 thereof.

15. In the result, the appeal is hereby allowed. The

judgment and order of conviction and sentence dated 22-5-1992 passed by the learned Special Judge in Special Case no.5 of 1985 against the appellant-Bhupendrakumar Sanatkumar Pathak for the offence under Section 161, I.P.C. and Section 5(1)(d) of the Prevention of Corruption Act is hereby set aside and he is acquitted of the charges levelled against him.

(M.D.Shah,J.)

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